BUDGET CHANGES 2014-15

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In the words of Mahatma Gandhi

"You must not worry whether the desired result follows from your action or not, so long as your motive is pure, your means correct"

TIMIT LIMIT FOR MAKING ADJUDICATION

Finance Act, 2014 w.e.f. 06.08.2014, amendment to specify that show cause notice should be decided within six months for normal period and for extended period, within one year from the date of notice where it is possible to do so and this amendment in line with the amendment already made sometime back in the Central Excise Act.

Under section 73, a new sub-section 4B has been inserted by Finance Act, 2014 w.e.f 06.08.2014, to prescribed the time limit for passing an order

(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)—

(a) **within six months from the date of notice** where it is possible to do so, in respect of cases **whose limitation is specified as eighteen months** in sub-section (1);

(b) **within one year from the date of notice**, where it is possible to do so, in respect of cases falling **under the proviso to sub-section (1) or the proviso to sub-section (4A)**.

FIXIED TIMIT LIMIT HAS BEEN FOR TAKING CENVAT CREDIT OF INPUTS AND INPUT SERVICES

The Central Government by the Notification no. 21/2014-CE(NT) dated 11.07.2014 made amendment in the CENVAT Credit Rules, 2014 and fixed the time limit for taking CENAVT Credit on Input and Input Services.

4. Conditions for allowing CENVAT credit.—(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.[Rule 4(1) ***of CENVAT Credit Rules, 2004]***

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9 [Third proviso Rule 4(1) of CENVAT Credit Rules, 2004 **which shall be effective from 01.09.2014***]*

The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received. **[Rule 4(7)** *of CENVAT Credit Rules, 2004]*

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9 [sixth proviso Rule 4(7) of CENVAT Credit Rules, 2004 **which shall be effective from 01.09.2014***]*

Whereas under the main provisions of sub-rule (1) of Rule 4, time of taking credit is relate to 'on receipt of inputs' and not from the date of invoice/bill or challan, on the basis of which credit is taken, whereas under the third proviso to sub-rule (1) of Rule 4, time limit of six months has been fixed for availment of the CENVAT Credit from the 'date of invoice/bill'. Therefore, how the proviso can provide something which is not even provided under the main provision as the proviso only provide an exception to main provisions. **In Frankfinn Aviation Services P Ltd. v Asst. Comm. Designated Authority VCES, Service Tax 2014 (34) STR 165 (Del.)**, the High Court held that it is settled law that a proviso merely crave out of an exception from the operation of the main provision. In view of the author, the abovementioned proviso has made out something which is not even covered by the main provisions, as main provisions does not relate to date of invoice/ bill at all, whereas the proviso relate to date of invoice/ bill. Whereas the proviso only could make out exception to main provisions, but cannot expand or change the main provisions and cannot make out something which is not even covered by main

MANADATORY PRE-DEPOSIT

Section 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

Explanation.—For the purposes of this section “duty demanded” shall include,—

(i) amount determined under section 11D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under rule 6 of the CENVAT Credit Rules, 2001 or the CENVAT Credit Rules, 2002 or the CENVAT Credit Rules, 2004.

The Hon’ble Finance Minister In Budget Speech 2014-15 said that:

252. To expedite the process of disposal of appeals, amendments have been proposed in the Customs and Central Excise Acts with a view to **freeing appellate authorities from hearing stay applications and to take up regular appeals for final disposal**.

INTEREST ON REFUND OF PRE-DEPOSIT

Section 35FF. Interest on delayed refund of amount deposited under section 35F.—Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of amount till, the date of refund of such amount:

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.

In the words of Mahatma Gandhi

There is a higher court than courts of justice and that is the court of conscience. It supercedes all other courts.